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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 MD Helicopters Incorporated,

10 Plaintiff,

11 v.

12 United States of America, et al.,

13 Defendants.
14

No. CV-19-02236-PHX-JAT

ORDER

15 Pending before the Court are the Federal Defendants’ Motion to File Expert Report
16 of Dr. Timothy Sestak Under Seal (Doc. 120) and Plaintiff MD Helicopters Incorporated’s
17 (“MDHI”) Motion to File Plaintiff’s Position Brief Re Expert Disclosure Deadlines Under
18 Seal (Doc. 117).

19 The Federal Defendants’ Motion to seal Dr. Sestak’s expert report avers that this
20 report not only includes express quotations and references to sealed portions of the
21 administrative record, but contains information protected from disclosure under the
22 Protective Order entered in this case and under federal statutes, specifically
23 10 U.S.C. § 2371b(h) and 10 U.S.C. § 130. (Doc. 120 at 2–3). The Federal Defendants’
24 further state that the information contained in Dr. Sestak’s report may also be subject to
25 claims of trade secret protection by MDHI. (*Id.* at 3). The Court will grant the Federal
26 Defendants’ Motion (Doc. 120) for the reasons stated in the Court’s June 7, 2019 Order
27 (Doc. 81).

28 MDHI’s Motion to seal its position statement regarding expert disclosures states

1 that this position brief contains factual material and related opinion that consists of trade
2 secret information because it reveals the substance of its proposal submitted to the Army
3 under the FARA CP solicitation. (Doc. 117 at 2). Particularly, MDHI's position brief
4 discusses Dr. Sestak's expert report, which includes material concerning MDHI's proposal
5 as well as the Army's evaluation of MDHI's proposal. (*Id.*). MDHI also avers that the
6 material in its position brief constitutes source selection information that is protected from
7 disclosure pursuant to 10 U.S.C. § 2371b(h), which incorporates the Procurement Integrity
8 Act, 41 U.S.C. § 2102. (*Id.*). The Court will grant MDHI's Motion (Doc. 117) for the
9 reasons stated in the Court's June 7, 2019 Order (Doc. 81).


10 Finding "compelling reasons" to do so, *Kamakana v. City & County of Honolulu*,
11 447 F.3d 1172, 1180 (9th Cir. 2006),

12 **IT IS ORDERED** that the Federal Defendants' Motion to File Expert Report of
13 Dr. Timothy Sestak Under Seal (Doc. 120) is **GRANTED**. The Clerk of the Court is
14 directed to file under seal the document presently lodged at Doc. 121.

15 **IT IS FURTHER ORDERED** that MDHI's Motion to File Plaintiff's Position
16 Brief Re Expert Disclosure Deadlines Under Seal (Doc. 117) is **GRANTED**. The Clerk of
17 the Court is directed to file under seal the document presently lodged at Doc. 118.

18 Dated this 2nd day of August, 2019.

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James A. Teilborg
Senior United States District Judge